

Chambers Bill
TOBACCO REGULATION ACT

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SECTION 1. PURPOSE

The purpose of this Act is to strengthen existing state laws designed to prevent the sale and distribution of tobacco products to persons under the age of 18, and to make the sale and distribution of tobacco products subject to a single uniform system of state regulation.

To prohibit smoking in certain public places; to provide for smoke-free areas; and to provide a criminal penalty for violations of this Act.

SECTION 2. DEFINITIONS

As used in this Act, the following terms have the following meanings:

"Bar" means a place, or that portion or specified area of a restaurant, motel, hotel, convention center or resort which is used primarily to serve liquor or other alcoholic beverages, irrespective of whether or not food is also served there.

"Center of youth activities" means any playground, school or other facility when such facility is being used primarily by persons under the age of 18 for recreational, educational or other purposes.

"Common work area" means any enclosed area on the premises of a place of employment where two or more employees are assigned to sit or otherwise be present in the performance of their duties, and where such employees share common work spaces, equipment or facilities such that each employee is aware of or readily able to observe the activities of others taking place in that work area.

"Enclosed area" means all space which is enclosed on all sides by solid walls, windows or floor-to-ceiling partitions, irrespective of the size of such area and of any doorway, stairway or passageway providing a means of ingress and egress to such area.

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"Person" means any individual, partnership, association or corporation.

"Place of employment" means any indoor area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conferences and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" within the meaning of this subdivision unless a child care or health care facility is operated therein or unless it is a common area of a multiple dwelling which contains ten or more dwelling units.

"Private function" means weddings, parties, testimonial dinners and other similar gatherings in which the seating arrangements are under the control of the organizer or sponsor of the event and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held.

"Proof of age" means a driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

"Public conveyance" includes buses, taxis, trains, trolleys, airplanes, ferries, boats or other vehicles used to transport the public.

"Public place" means any enclosed indoor area to which the general public is invited or permitted, including, but not limited to, state and local government buildings, educational facilities, restaurants, retail stores, public conveyances, auditoriums, arenas, and meeting rooms. A private residence is not a public place within the meaning of this statement unless a child care or health care facility is operated therein.

"Retail store" means any place which in the regular course of business sells goods directly to the public.

Restaurants - ?

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"Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotional purposes. "Sampling" means the distribution to members of the general public of tobacco product samples.

"Smoking area" means any designated area meeting the requirements of Section 5 of this Act.

"Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise in which a substantial activity is the sale, manufacture, marketing, distribution or promotion of tobacco, tobacco products and accessories either to wholesale or retail markets.

"Tobacco products" means all consumer products using or composed of tobacco, including cigarettes, pipe tobacco and chewing tobacco, which are manufactured for sale either at wholesale or retail.

SECTION 3. LICENSE

It shall be unlawful to sell or offer for sale at retail any tobacco products without having first obtained a tobacco dealer's license. Applications for such licenses shall be made in compliance with this article. [Detailed provisions re application?] The annual fee for such license shall be fifty dollars (\$50.00).

SECTION 4. SALE AND DISTRIBUTION

- (a) Minimum Age. It shall be unlawful for any person to sell any tobacco product or distribute any tobacco product to any person under the age of 18; provided, however, that this prohibition shall not apply to sale or distribution to a person who manufactures, sells or distributes tobacco products or to sale or distribution by family members or acquaintances on property that is not open to the public.

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- (b) Notice. The owner of an establishment at which tobacco products are sold at retail shall cause to be posted in a conspicuous place in the establishment the following notice: "By Law, Tobacco Products May Be Sold Only to Persons 18 and Older." Such person shall ensure any vending machine located in the establishment conspicuously displays such notice.
- (c) Vending Machines. Tobacco products may be sold at retail through vending machines only in (1) factories, businesses, offices or other places not open to the general public, (2) places to which persons under the age of 18 are not permitted access, (3) places where alcoholic beverages are offered for sale, and (4) places where the vending machine is under the supervision of the owner of the establishment or an employee of such owner.
- (d) Sampling.
- (i) Subject to paragraph (ii) of this section, it shall be unlawful for any person to engage in tobacco product sampling in or on any public street, sidewalk, or park ^{or} within 500 feet of any center of youth activities.
- (ii) ^{Notwithstanding any law to the contrary} Tobacco product samples may be distributed (1) at an outdoor event sponsored in whole or in part by a tobacco product manufacturer in areas designated by a manufacturer for that purpose; (2) at private functions; or (3) on the premises of retail establishments or public facilities which, have a valid license for the retail sale of tobacco products or alcoholic beverages.

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(e) Proof of Age. A person selling tobacco products, supervising a tobacco product vending machine or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of 18.

SECTION 5. PURCHASE OR RECEIPT

It shall be unlawful for any person who has not attained the age of 18 to purchase or attempt to purchase, or receive or attempt to receive, any tobacco product.

SECTION 6. REGULATION OF SMOKING IN PUBLIC PLACES

In all enclosed areas in public places during the times in which the public is invited or permitted, smoking shall be regulated in accordance with the provisions below.

1. Smoking shall not be permitted in public means of mass transportation, including rapid transit, trains and buses, provided that this prohibition shall not apply to taxi cabs, limousines or other private conveyances.
2. In retail stores, other than retail tobacco stores and restaurants which are greater than 10,000 square feet, smoking shall be prohibited, unless the owner or proprietor designates the store as a smoking permitted area. Any food service area or restaurant located in a retail store shall be subject to the restaurant provisions of this Act.
3. In restaurants with an indoor seating capacity of more than fifty persons, smoking may be permitted in any part of the restaurant which constitutes a bar as defined in Section 2, and in a contiguous area designated for smoking, so long as such area contains at least fifty percent of the indoor seating capacity of the restaurant. A proprietor or other designated

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employee may, in his or her discretion, permit smoking in an area other than that designated for smoking, where customers request to be seated in a smoking area, at a time when the only available seats are located, in whole or in part, in the non-smoking section. A proprietor shall only accommodate such party when the available seating is in an area contiguous to the designated smoking area of the restaurant. Every restaurant with a seating capacity of more than fifty patrons permitting smoking therein in accordance with the provisions of this paragraph, shall post signs indicating that non-smoking sections are available, in addition to any other signs as required by Section 8. When an employee responsible for seating arrangements is on duty each patron, prior to being seated, shall be asked his or her preference regarding seat locations in a smoking or non-smoking section. Smoking may be permitted in all areas of restaurants with an indoor seating capacity of fifty patrons or fewer. The proprietor of such establishment shall post signs at the entrance and at appropriate locations within the premises indicating that smoking is permitted therein. An owner of a restaurant with an indoor seating capacity of fifty patrons or fewer, who is not otherwise subject to the smoking restrictions of this section, may voluntarily choose to regulate or ban smoking in his or her establishment in accordance with the provisions pertaining to restaurants with an indoor seating capacity of more than fifty patrons.

4. In hotels and motels, smoking in public areas may be permitted in a contiguous area designated for smoking, so long as such area, to the extent reasonably practicable, is not within a twenty-foot radius of that part of what is commonly referred to as the front desk or registration desk to which the public has access, and so long as such smoking area

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does not constitute more than fifty percent of any area commonly called a lobby. Proprietors shall make available smoking or non-smoking guest rooms in hotels and motels to customers who request them.

5. Smoking shall be permitted only in designated smoking areas of libraries, museums and galleries.
6. In motion picture theaters, concert halls, auditoriums and buildings primarily used for, or designed for the primary purpose of, exhibiting movies, stage drama, musical recital, dance, lecture or other similar performance, except when smoking is a part of a theatrical production, smoking may be permitted only in a contiguous area designated for smoking, so long as such area contains no more than fifty percent of any area commonly called a lobby.
7. In convention halls, smoking may be permitted in contiguous areas designated for smoking, so long as such areas constitute no more than fifty percent of the seating capacity or floor space open to the public for a particular event taking place within the convention hall; and in an area designated for smoking in that area commonly called a lobby; and at conventions of private groups where the persons participating in the convention are individually identified by the sponsor or organizer of the convention, or determined by law.
8. In sports arenas, smoking may be permitted in contiguous areas in booths that access all lobby areas and within that arena area designated for smoking, so long as such areas constitute no more than fifty percent of any area. With respect to bowling alleys, smoking is permitted in fifty percent of the bowler settee area (the area occupied by bowlers while keeping score and actually bowling), and in a contiguous designated area of the concourse (the area directly behind the bowler

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settee area), so long as such smoking area does not constitute more than fifty percent of the floor space of the concourse area.

9. In places of meeting or public assembly during such time as a meeting open to the public is being conducted for educational, religious, recreational, or political purposes, but not including meetings conducted in private residences, unless a child or health care facility is operated therein or unless such meeting is conducted in a common area of a multiple dwelling which contains ten or more dwelling units, smoking shall be permitted only in designated areas reasonably accessible to all attendees.
10. In health care facilities, including hospitals, clinics, physical therapy facilities, convalescent homes, smoking is prohibited; provided, however, that this section shall not authorize the prohibition of smoking in areas designated for smoking in restaurants and dining areas and in offices which are not ordinarily used for care and treatment of patients. This section shall not prohibit smoking by patients with extraordinary medical conditions, psychiatric disorders or patients in special programs, provided that the patient's physician has written a prescription or an order allowing the patient to smoke. In addition, this section shall not prohibit smoking in patient lounges designated for smoking, provided that such lounges shall not constitute more than fifty percent of the total lounge space available.
11. Smoking is prohibited in all pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level; provided, however, that this section shall not prohibit smoking in areas designated for smoking in employee dining areas, lounges, or administrative offices.

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12. In all schools other than those covered in paragraph twelve of this subdivision, including, but not limited to, community colleges, technical training establishments, specialty schools, colleges and universities, smoking shall be permitted only in:
 - (A) Areas designated for smoking in employee lunchrooms, cafeterias and lounges; and
 - (B) Areas designated for smoking in student dining areas or lounges which shall constitute not more than fifty percent of the seating capacity or floor space, whichever is greater, of such student dining areas or lounges.
13. Smoking is prohibited in all elevators.
14. Smoking is prohibited on any service line in an enclosed area within a public place during the times in which the public is invited or permitted.

SECTION 7. REGULATION OF SMOKING IN PLACE OF EMPLOYMENT

- (a) It shall be the responsibility of employers who employ more than fifty employees to provide, to the extent reasonably practicable, smoke-free work areas for non-smoking employees who sit or otherwise occupy common work areas in places of employment, provided that smoke-free areas shall not occupy more than fifty percent of such common work areas.
- (b) Within ninety days after the effective date of this chapter, every employee employing more than fifty employees and having employees occupying common work areas shall adopt, implement, make known and maintain a written smoking policy which shall contain at minimum, the following requirements:

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1. That an employee may designate his or her private work area not in a common work area as a non-smoking area.
2. That smoking may be permitted in private, enclosed offices, and in enclosed areas occupied exclusively by employees who do not object, that such areas be designated for smoking, even though such enclosed areas may be visited in the normal course of business by other persons or employees.
3. In auditoriums, classrooms, elevators, hallways, restrooms, and rooms or areas containing photocopying or other office equipment used in common by employees, and in conference rooms and meeting rooms that shall be designated smoking areas.
4. The designation of smoking and non-smoking areas in cafeterias, lunchrooms and employee lounges, which areas shall occupy at least one half of the seating capacity or floor space of said areas.
5. No person or employer shall retaliate by adverse personnel action or disadvantage in any manner a person, an employee or an applicant for employment who smokes, does not smoke, or exercises, or attempts to exercise, any rights granted under the written smoking policy pursuant to this subdivision. Such adverse personnel action includes, but is no limited to, dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, compensation or other benefit, failure to hire, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee or potential employee. [civil redress under appropriate Cal. statute]

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- (c) An employer may designate a separate enclosed room or rooms within a place of employment solely for use by smokers.
- (d) Employers shall prominently post the smoking policy in the workplace, and shall, within three weeks of its adoption, disseminate the policy to all employees, and to new employees when hire.
- (e) Employers shall supply a written copy of the smoking policy upon request to any employee or prospective employee.
- (f) Where a place of employment is also a public place where smoking is prohibited pursuant to Section 6, the employer shall nevertheless be required to adhere to the provisions of this section with respect to the private areas to which the general public does not have access.
- (g) Nothing in this section shall be construed to impair, diminish, or otherwise affect any collectively bargained procedure or remedy available to an employee with respect to disputes arising under the employer's smoking policy or with respect to the establishment of a procedure for redress of any adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this section.

SECTION 8. AREAS WHERE SMOKING IS NOT REGULATED

The following areas shall not be subject to the smoking restrictions of this chapter:

- a. Bars.
- b. Private residences, except when a child care or health care facility is operated therein; provided, however, that a common area of a multiple dwelling which contains ten or more units shall be subject to smoking restrictions when it is a place of employment or a public place.

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- c. Retail stores of 10,000 square feet or less, except as provided in paragraph four of Section 6.
- d. Tobacco businesses.
- e. Private automobiles.
- f. Private, enclosed offices.
- g. Enclosed areas in restaurants, catering halls, convention halls, hotel and motel conference rooms, and other such similar facilities during the time these enclosed areas or rooms are being used exclusively for private functions, such that the seating arrangements are under the control of the sponsor or organizer of the function and not the person who owns, operates or manages such facility.
- h. Restaurants with an indoor seating capacity of fifty patrons or fewer, except as provided in paragraph five of subdivision a of Section 17-503.
- i. Businesses which employ 50 or fewer employees.

SECTION 9. POSTING OF SIGNS

- a. Except as may otherwise be provided by rules and regulations promulgated by the commissioner, "Smoking" or "No Smoking" signs, or the international symbols indicating the same, and any other signs necessary to comply with the provisions of this chapter shall be posted at all appropriate locations within, each enclosed area where smoking is either prohibited, permitted or otherwise regulated by this chapter, by the owner, operator, manager or other person having control of such area. The size, style and location of such signs shall be determined in accordance with rules and regulations promulgated by the commissioner, but in promulgating such rules and regulations, the commissioner shall

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take into consideration the concerns of the various types of establishments regulated herein with respect to the style and design of such signs.

- b. In addition to the posting of signs as provided in subdivision a, every motion picture theater owner, manager or operator shall show upon the screen for at least five seconds prior to the showing of each feature motion picture, information indicating the areas where smoking is prohibited and permitted within the premises.

SECTION 10 ENFORCEMENT AND PENALTIES

The department shall enforce the provisions of this chapter. In addition, designated enforcement employees of the department of buildings, the department of consumer affairs,

(A) Penalties --

- (1) Minimum age. (A) A person who sells or distributes any tobacco product in violation of Section 3(a) or (d), or who fails to request proof of age as required by Section 3(e), shall be subject to --
- (i) a fine or civil money penalty not to exceed \$_____ for the first violation within a two-year period;
 - (ii) a fine or civil money penalty not to exceed \$_____ for the second violation within a two-year period; and
 - (iii) a fine or civil money penalty not to exceed \$_____ for the third violation within a two-year period.
- (B) (i) If the sale is made by an employee of the owner of the establishment, the employee shall be guilty of the offense and subject to the fine or civil money penalty;
- (ii) If the sale is made through a vending machine, the owner of the establishment shall be guilty of the offense and subject to the fine

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or civil money penalty; provided, however, that if the owner has made an employee responsible for supervising the vending machine, such employee shall be guilty of the offense and subject to the fine or civil money penalty;

- (iii) If the sample is distributed by an employee of the company conducting the sampling, the employee shall be guilty of the offense and subject to the fine or civil money penalty.

(C) Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of Section 3(a). No person shall be liable for more than one violation of Section 3(a) on a single day.

(2) Notice. A person who violates Section 3(b) shall be subject to a fine or civil money penalty not to exceed \$_____.

(3) Vending Machines. A person who violates Section 3(c) shall be subject to a fine or civil money penalty not to exceed \$_____.

(4) Purchase or Receipt. A person who violates Section 4 shall be subject to a fine or civil money penalty not to exceed \$_____ for a first violation and a fine or civil money penalty not to exceed \$_____ for any additional violations, in addition to the dispositions otherwise provided by law.

SECTION 11. PREEMPTION

It is the Legislature's intent to occupy the entire field of regulation of all matters which are the subject of this Act exclusive of all local regulation by any political subdivision. As a result, no political subdivision within the State may enact any provision prohibiting or regulating the sale, distribution or use of tobacco

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or civil money penalty; provided, however, that if the owner has made an employee responsible for supervising the vending machine, such employee shall be guilty of the offense and subject to the fine or civil money penalty;

(iii) If the sample is distributed by an employee of the company conducting the sampling, the employee shall be guilty of the offense and subject to the fine or civil money penalty.

(C) Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of Section 3(a). No person shall be liable for more than one violation of Section 3(a) on a single day.

(2) Notice. A person who violates Section 3(b) shall be subject to a fine or civil money penalty not to exceed \$_____.

(3) Vending Machines. A person who violates Section 3(c) shall be subject to a fine or civil money penalty not to exceed \$_____.

(4) Purchase or Receipt. A person who violates Section 4 shall be subject to a fine or civil money penalty not to exceed \$_____ for a first violation and a fine or civil money penalty not to exceed \$_____ for any additional violations, in addition to the dispositions otherwise provided by law.

SECTION 11. PREEMPTION

It is the Legislature's intent to occupy the entire field of regulation of all matters which are the subject of this Act exclusive of all local regulation by any political subdivision. As a result, no political subdivision within the State may enact any provision prohibiting or regulating the sale, distribution or use of tobacco

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products. All such requirements and prohibitions heretofore adopted by any political subdivision are hereby declared to be null and void.

SECTION 12. EFFECTIVE DATE

This Act shall take effect 120 days after the date of enactment.

SECTION 13.

All laws or parts of laws which conflict with this Act are hereby repealed.

SECTION 14.

The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

SECTION 15.

This Act shall become effective immediately upon the passage and approval by the Governor, or upon its otherwise becoming a law.

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